

DKT. 371-4

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Michael J. Bettinger (SBN 122196)
mbettinger@sidley.com
Irene Yang (SBN 245464)
irene.yang@sidley.com
SIDLEY AUSTIN LLP
555 California Street, Ste. 2000
San Francisco, California 94104
415-772-1200 – Telephone
415-772-7400 – Facsimile

*Attorneys for Plaintiffs
HUAWEI TECHNOLOGIES CO., LTD.
HUAWEI DEVICE USA, INC.,
HUAWEI TECHNOLOGIES USA, INC., and
HISILICON TECHNOLOGIES CO., LTD.*

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

HUAWEI TECHNOLOGIES CO., LTD.,
HUAWEI DEVICE USA, INC., and
HUAWEI TECHNOLOGIES USA, INC..

Plaintiffs / Counterclaim- Defendants.

V.

SAMSUNG ELECTRONICS CO., LTD.,
SAMSUNG ELECTRONICS AMERICA,
INC..

Defendants / Counterclaim- Plaintiffs.

and

SAMSUNG RESEARCH AMERICA

Defendant,

V.

HISILICON TECHNOLOGIES CO., LTD.,
Counterclaim-Defendant.

David T. Pritikin (*pro hac vice*)
dpritikin@sidley.com
David C. Giardina (*pro hac vice*)
dgiardina@sidley.com
Douglas I. Lewis (*pro hac vice*)
dilewis@sidley.com
John W. McBride (*pro hac vice*)
jwmcbride@sidley.com
SIDLEY AUSTIN LLP
One South Dearborn
Chicago, Illinois 60603
312-853-7000 – Telephone
312-853-7036 – Facsimile

Case No. 3:16-cv-02787-WHO

**HUAWEI'S REPLY IN SUPPORT OF ITS
MOTION FOR SUMMARY JUDGMENT
WITH RESPECT TO:**

1. SAMSUNG'S ANTITRUST CLAIM
2. NON-INFRINGEMENT OF SAMSUNG'S '350 PATENT CLAIM
3. NON-INFRINGEMENT OF SAMSUNG'S '130 PATENT CLAIMS
4. NON-INFRINGEMENT OF SAMSUNG'S RE105 PATENT
5. NON-INFRINGEMENT OF SAMSUNG'S '825 PATENT CLAIMS

Hearing Date: August 8, 2018
Time: 2:00 p.m.
Location: Courtroom 2, 17th Floor
Judge: Hon. William H. Orrick

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1 Samsung's Opposition to Huawei's Motion for Summary Judgment ("Opp.") does nothing
 2 to establish the existence of a disputed issue of material fact preventing summary judgment in
 3 Huawei's favor on any of the claims as to which Huawei has moved.

4 **I. SAMSUNG'S ANTITRUST CLAIM IS SUBJECT TO SUMMARY JUDGMENT.**

5 Samsung's attempt to convert what is, at best, a contract dispute into an antitrust violation
 6 by referring vaguely to Huawei's alleged "multi-pronged course of anticompetitive conduct" (Opp.
 7 1:9-10) cannot obscure the fact that there is no evidence that Huawei got its patents incorporated
 8 into the relevant standards by making false FRAND promises it had no intention of keeping. To
 9 the contrary, Samsung's Opposition makes clear that Huawei's conduct vis-à-vis Samsung has
 10 been consistent with its public declarations, which undermines any claim that Huawei had a secret
 11 plan to renege on its FRAND commitments. For this, and the other reasons discussed below,
 12 Huawei is entitled to summary judgment on Samsung's monopolization claim.

13 **A. Samsung Cannot Establish Actionable Exclusionary Conduct.**

14 Although its expert Dr. Hausman analyzed Samsung's claim as one for attempted
 15 monopolization,¹ Samsung's Opposition makes clear that its claim is for monopolization. Opp. 3.
 16 To establish a triable monopolization claim, Samsung must establish the existence of a genuine
 17 issue of material fact that Huawei acquired or maintained its alleged monopoly position in the
 18 alleged relevant technology markets by means of exclusionary conduct, rather than on the basis of
 19 "growth or development as a consequence of a superior product, business acumen, or historic
 20 accident." *Verizon Commc'ns Inc. v. Law Offices of Curtis V. Trinko, LLP*, 540 U.S. 398, 407
 21 (2004) (quoting *United States v. Grinnell Corp.*, 384 U.S. 563, 570-71 (1966)) (quotations omitted).
 22 In a case like this, where Huawei's alleged monopoly position in the relevant technology markets is
 23 a consequence of the incorporation of timely disclosed patented technology into standards (Mot. Ex.
 24 1 at ¶ 55), Samsung needs to establish that Huawei convinced 3GPP and ETSI to incorporate
 25 Huawei's patented technologies in the relevant standards by making false FRAND commitments

26
 27 ¹ Mot. Ex. 1, Hausman Rpt. ¶¶ 9, 57. Citations to "Mot. Ex." are to the exhibits attached to the
 Declaration of John McBride in Support of Huawei's Motion for Summary Judgment (July 3, 2018),
 28 ECF No. 328-1.

1 that Huawei had no intention to honor.² Mot.³ 6-7; *Research In Motion Ltd. v. Motorola, Inc.* 644 F.
 2 Supp. 2d 788, 798-99 (N.D. Tex. 2008). The undisputed facts undermine any such claim (Mot. 7-8),
 3 and nothing Samsung identifies in its Opposition creates a genuine issue to the contrary.

4 As an initial matter, while Samsung is correct that issues of intent are generally factual in
 5 nature (Opp. 6), none of the cases it cites suggest that antitrust claims like its own are not amenable
 6 to summary judgment where—as set forth in Huawei’s motion and below—no reasonable jury
 7 could conclude on the basis of the evidence that the central statements in question were false when
 8 made. *Matsushita Elec. Indus. Co., v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986) (quoting *First*
 9 *Nat'l Bank of Ariz v. Cities Serv. Co.*, 391 U.S. 253, 289 (1968)) (“Where the record taken as a
 10 whole could not lead a rational trier of fact to find for the non-moving party, there is no ‘genuine
 11 issue for trial.’”). As set forth in Huawei’s motion, there is significant authority finding summary
 12 judgment appropriate where—as here—the basis for a claim that a contractual commitment (like

13 ² Samsung’s suggestion that a mere breach of a party’s FRAND commitments would be sufficient to
 14 support a claim for monopolization is baseless. Opp. 5; see also Mot. 5-6. Samsung misreads Judge
 15 Koh’s decision in *Fed. Trade Comm’n v. Qualcomm Inc.*, Case No.17-CV-00220-LHK, 2017 WL
 16 2774406 (N.D. Cal. June 26, 2017), to suggest that a party may breach an “antitrust duty to deal”
 17 simply by seeking supra FRAND royalties after its patents have been incorporated into a standard.
 18 Opp. 5. But in that case the allegation Judge Koh was considering when she discussed an “antitrust
 19 duty to deal” was not that the SEP holder (Qualcomm) had charged rival chipset makers excessive
 20 royalties as a part of its scheme to monopolize the relevant markets for high-end LTE and CDMA
 21 chipsets, but rather that it refused to make licenses available to rival chipset makers *on any terms*.
Qualcomm, 2017 WL 2774406, at *6, *19-23. Even in those “narrow” and exceptional
 22 circumstances where the antitrust laws impose a duty to deal on a monopolist, there is “no duty to
 23 deal on the terms and conditions preferred” by the monopolist’s rivals. *Aerotec Int’l, Inc. v.*
Honeywell Int’l, Inc., 836 F.3d 1171, 1184 (9th Cir. 2016) (affirming summary judgment on refusal
 24 to deal claim where plaintiff “simply did not like the business terms” offered by the alleged
 25 monopolist) (citation omitted). Here, Huawei has not refused to offer a license to Samsung; there is
 26 simply a dispute as to the price. Thus, there can be no liability on the basis of an alleged violation of
 27 an “antitrust duty to deal.” The decision in *Hynix Semiconductor Inc. v. Rambus Inc.*, 527 F. Supp.
 28 2d 1084 (N.D. Cal. 2007) likewise does not suggest that the antitrust laws should be used to sanction
 breach of a FRAND commitment. There, Hynix alleged that Rambus had obtained its monopoly
 position in the relevant technology markets by failing to disclose its SEPs in the standard setting
 process in violation of the SSO’s rules, and the court recognized only that such “deceptive conduct
 before a standards setting organization can be anticompetitive conduct that violates section 2 of the
 Sherman Act.” *Id.* at 1088-89. Finally, nothing in the letter authored by the former government
 officials and professors that Samsung cites (Opp. 5, Decl. of Sam Stake in Support of Samsung’s
 Opp’n to Mot. for Summary Judgment (“Stake MSJ Opp’n Decl.” ECF No. 358-1)Ex. 7, ECF No.
 358-8, hereafter all exhibits to referenced from this declaration will be identified as “Opp. Ex.”)
 suggests that they believe the antitrust laws can or should be used to sanction a mere breach of a
 FRAND commitment absent exclusionary conduct by the SEP holder to acquire or maintain its
 monopoly position. To the extent that they do make such a recommendation, it is contrary to the law.
³ Huawei’s Mot. for Summary Judgment (“Mot.”) 6-7 (July 3, 2018), ECF No. 327-8.

1 Huawei's FRAND commitments) was false boils down to an allegation that it was later breached.
 2 Mot. 7-8. Samsung's attempt to distinguish these decisions on the grounds that they did not involve
 3 antitrust claims is of no moment. Opp. 8 n.7. While “[s]ummary judgment [was once] disfavored in
 4 antitrust cases,” the Ninth Circuit has recognized that “any presumption against the granting of
 5 summary judgment in complex antitrust cases has now disappeared.” *In re Online DVD-Rental*
 6 *Antitrust Litig.*, 779 F.3d 914, 921 (9th Cir. 2015) (citations omitted); *see also In re Wholesale*
 7 *Grocery Prods. Antitrust Litig.*, 752 F.3d 728, 732 (8th Cir. 2014) (holding “it is now beyond
 8 debate that ‘the Supreme Court would find an error of law in the imposition of a heightened
 9 standard for summary judgment in a complex antitrust case.’”) (citation omitted).⁴

10 In attempting to establish a triable issue that Huawei's FRAND commitments were false
 11 when made, Samsung emphasizes that Huawei made the last of the five patent disclosures to ETSI
 12 at issue here in the same period that Huawei made its initial SEP licensing proposals to Samsung
 13 seeking a royalty of 1.5%. Opp. 7 & n.3-4.⁵ But, as Samsung acknowledges, Huawei had publicly
 14 announced as early as 2008 that it expected to seek a royalty for its LTE portfolio of up to 1.5%,
 15 which would be “negotiable in bilateral negotiations.” Opp. 6-7 (citing Opp. Ex. 1 at 208:19-22 (J.
 16 Ding testimony referencing Huawei public statement)); Reply Ex.⁶ 44 at ¶ 66 (quoting Huawei
 17 announcement). [REDACTED] there is
 18 nothing wrong with opening negotiations at a headline rate like 1.5%. Reply Ex. 45 at 32:19-34:24,
 19 Ex. 46 at 70:15-71:6, Ex. 44 at ¶¶ 23-33 ([REDACTED]
 20 [REDACTED]
 21 [REDACTED]). The fact that Huawei opened negotiations at its previously

22 _____
 23 ⁴ Samsung's citation to a number of decisions rejecting motions to dismiss FRAND-related antitrust
 24 claims (Opp. 3) likewise does not establish that such claims may not be resolved on summary
 25 judgment. To the contrary, summary judgment has been granted on such claims in other cases. See,
e.g., *Apple, Inc. v. Motorola Mobility, Inc.*, 886 F. Supp. 2d 1061, 1076-77 (W.D. Wis. 2012).

26 ⁵ Samsung acknowledges that Huawei disclosed to ETSI, and made FRAND commitments with
 27 respect to, the patents around which Dr. Hausman defines his alleged relevant technology markets on
 March 9, 2009, October 15, 2009, July 6, 2010, April 21, 2011, and July 5, 2013. Opp. 3 n.3.
 [REDACTED] ⁶ Citations to “Reply Ex.” are attached to the Declaration of John W. McBride in Support of
 28 Huawei's Reply in Support of Motion for Summary Judgment filed concurrently herein.

1 stated public rate, and maintained that opening offer for a time in the absence of any responsive
 2 counter-proposal from Samsung,⁷ would not permit a reasonable jury to conclude Huawei never
 3 intended to abide by its FRAND commitments. Indeed, that ETSI adopted standards incorporating
 4 Huawei's patented technology with full knowledge that Huawei intended to seek a royalty of up to
 5 1.5% undermines any antitrust claim predicated upon Huawei's demand for such royalties.

6 *Townshend v. Rockwell Int'l Corp.*, No. C99-400SBA, 2000 WL 433505, at *7 (N.D. Cal. Mar. 28,
 7 2000) (dismissing antitrust claim where SSO had adopted defendant's technology after disclosure
 8 of proposed licensing terms later claimed not to be FRAND).

9 Samsung's further claim that Huawei's lower subsequent offers were not FRAND because
 10 they exceed the amount Huawei allegedly received from [REDACTED] in late 2014 (Opp. 7) is mistaken,⁸
 11 but—even if accepted as true—this shows, at most, that Huawei breached its FRAND obligations at
 12 some point after they were made. That fact cannot, as a matter of law, create a triable issue that
 13 Huawei's FRAND commitments were false from their inception. Mot. 7-8. Nor can the fact that
 14 Huawei sought injunctive relief against Samsung in China in May 2016; even if Huawei's pursuit of
 15 injunctive relief were a breach of Huawei's FRAND obligations, which it is not (*see* Mot. 9 n.8),
 16 that cannot be used to establish that the FRAND commitments Huawei made years earlier were
 17 false. Indeed, any inference that Huawei had a long-held plan to evade its FRAND obligations
 18 based on its pursuit of injunctions or otherwise is refuted as a matter of law by the undisputed facts
 19 that Huawei (1) repeatedly offered to resolve the parties' licensing dispute via neutral arbitration,⁹

20 ⁷ It is undisputed that Samsung did not make its first SEP-only license counter-offer to Huawei until
 21 July 2015. Reply Ex. 47 at 164:12-165:17, and Ex. 48. After making its opening offer at 1.5%,
 22 Huawei reduced its demands in August 2014, July 2015, and June 2017. Decl. of Sam Stake in
 23 Support of Samsung's Mot. to Partially Exclude & Strike ("Stake FRAND Decl." ECF No. 335-1)
 24 Ex. 4 at ¶ 22; Reply Ex. 46 at 139:8-12.

25 ⁸ For a discussion of the Huawei-Apple license, *see* Huawei's Opp. to Samsung Mot. for Summary
 26 Judgment 3-7 (July 17, 2018), ECF No. 347-4.

27 ⁹ Samsung's complaint that Huawei did not send its first "formal arbitration offer" until after the
 28 litigation commenced (Opp. 8) is irrelevant. It is undisputed that Huawei had proposed arbitration
 repeatedly before that, but that Samsung was uninterested. Mot. 8 (citing repeated pre-suit arbitration
 offers). Samsung's further claim that, when Huawei did make a formal arbitration offer in August
 2016, "Huawei had already obtained the 'bargaining chip' that would help it 'get the royalties'"
 (Opp. 8) makes no sense. Huawei had not yet obtained an injunction against Samsung and offered to
 withdraw its requests for injunctive relief if Samsung committed in writing to a binding arbitral or

1 (2) asked this Court at the outset of the case to determine the terms of a FRAND cross-license on an
 2 expedited basis (Joint Case Mgmt. Statement 2-44 (Sept. 6, 2016), ECF No. 67; Huawei's Request
 3 to Bifurcate (Sept. 20, 2016), ECF No. 84), and (3) previously committed (and remains willing) to
 4 withdraw its injunction actions if Samsung would simply agree to any binding process (be it
 5 through arbitration or in court) to obtain a neutral determination of the FRAND terms of a cross-
 6 license between the parties. Mot. 8; Huawei's Opp'n to Samsung's Mot. to Enjoin 2:23-26 (Feb. 20,
 7 2018), ECF No. 240.¹⁰ No rational trier of fact could conclude that Huawei intended to deceive
 8 ETSI by making false FRAND commitments between 2009 and 2013 when Huawei has,
 9 undisputedly, repeatedly, and continuously offered to submit a FRAND determination to a neutral
 10 tribunal.¹¹ Samsung's effort to morph what is, at best, a breach of contract claim into an elaborate,
 11 years-long scheme to violate the U.S. antitrust laws should be rejected.

12 **B. Samsung Cannot Establish Harm To Competition.**

13 Samsung's antitrust claim should also be rejected because it cannot establish the requisite
 14 harm to competition. Mot. 9-10. The issue is not whether Samsung, as a "direct purchaser" in the
 15 alleged relevant technology markets, is presumptively a proper plaintiff with antitrust standing
 16 (Opp. 9), but rather whether the conduct Samsung complains of will "harm the competitive process
 17 and thereby harm consumers," rather than merely harming "one or more competitors" like
 18 Samsung. *Rambus Inc. v. FTC*, 522 F.3d 456, 463 (D.C. Cir. 2008) (quotation omitted); *Gorlick*
 19 *Dist. Centers, LLC v. Car Sound Exhaust Sys., Inc.*, 723 F. 3d 1019, 1024-25 (9th Cir. 2013)
 20 (antitrust plaintiff "must demonstrate injury to competition in the market as whole, not merely
 21 injury to itself as a competitor"). Here, the undisputed facts demonstrate the conduct about which

22
 23 judicial process to determine the terms of a license. Samsung has never identified a single
 24 objectionable feature in Huawei's August 2016 arbitration proposal. Mot. Ex. 20 at 2; Reply Ex. 49
 25 at 2; Reply Ex. 45 at 242:6-16.

26 ¹⁰ After years of negotiation and subsequent litigation, Samsung has maintained its position that it
 27 will not consent to rate-setting by the Court or an arbitral tribunal (ECF No. 303-2, p. 5 n.14),
 28 preferring instead to engage in limitless negotiation in furtherance of its hold-out strategy.

26 ¹¹ Given this context, the fact that Huawei's executives have acknowledged that they sought
 27 injunctive relief in an attempt to get Samsung to the negotiating table is hardly incriminating.
 28 Indeed, Huawei's statements are consistent with Samsung's own previously stated views on the
 appropriate use of injunctive relief. See ECF No. 240 at 21 n.18.

Samsung complains—that Huawei is using injunction actions in China in an alleged attempt to coerce Samsung to pay excessive royalties—will have no effect on competition generally.

.” Opp. 9 n.8. But in making this calculation, Dr. Hausman assumed without basis that an injunction in China would completely prevent Samsung from selling smartphones in the U.S. notwithstanding the fact that, in 2017, Samsung made [REDACTED] % of the smartphones it sold in the U.S. somewhere other than China. Stake FRAND Decl. Ex. 8 at Exhibit 6a. More importantly, given Huawei’s consistent, standing offer to forego injunctive relief if Samsung will agree to a neutral, third-party FRAND determination, there is no plausible scenario in which Samsung would be unable to avoid being enjoined in China by accepting neutrally-determined FRAND terms—and thus no plausible scenario where U.S. consumers or competition in the U.S. will be affected. Mot. 8.

C. The Act of State Doctrine Bars Samsung’s Antitrust Claim.

The act of state doctrine provides a final basis to reject Samsung’s antitrust claim, which is indisputably based on the presumption that Huawei’s lawsuits in China are improper. Samsung’s attempt to draw a distinction between Huawei’s “pursuit of injunctive relief” and the “Shenzhen Court’s judgment granting an injunction,” claiming that its theory is that only the “pursuit”

¹² Because Samsung cannot establish that Huawei engaged in any misconduct in the standard-setting process itself, it cannot establish that Huawei’s challenged litigation conduct was merely a part of a broader and independently illegal anticompetitive scheme as required to permit the recovery of litigation expenses in a case such as this. *Hynix*, 527 F. Supp. 2d at 1098. Nor, despite Huawei’s requests, has Samsung produced any records relating to its litigation expenses. Reply Ex. 50 at pp. 24-25. Thus, Samsung should be precluded from attempting to establish at trial the litigation costs it allegedly incurred as a result of Huawei’s alleged antitrust violation.

1 “constitutes the antitrust violation,” Opp.. 10-11, fails. “Pursuit” of an injunction cannot cause any
 2 harm to competition—only if Huawei’s suits succeed could Samsung and/or consumers be
 3 impacted in any way, as Samsung’s expert admitted. Mot. Ex. 7 at 214:14-215:2. Moreover, the
 4 Shenzhen Court has already determined that, in light of the FRAND commitment and the parties’
 5 conduct, Samsung should be enjoined. That establishes that Huawei’s lawsuit and pursuit of an
 6 injunction was entirely proper. To find for Samsung on its antitrust claim thus necessarily requires
 7 this Court to evaluate the legitimacy of the Shenzhen Court’s decision.

8 Samsung fails to address the Ninth Circuit’s standard for the act of state doctrine set forth in
 9 *Credit Suisse v. U.S. Dist. Court for the Cent. Dist. of Cal.*, 130 F.3d 1342, 1346 (9th Cir. 1997).
 10 First, Samsung does not dispute that the Shenzhen Court’s injunction is “an official act of a foreign
 11 sovereign performed within its own territory.” *Id.* (citations and internal quotations omitted). While
 12 Samsung attempts to characterize the Shenzhen Actions as a “mere dispute between private
 13 parties,” and notes the Chinese government “is not a party” to that litigation (Opp. 11), that is
 14 irrelevant: A foreign judgment arising out of private litigation may be considered an act of state
 15 when it gives effect to the public interest of the foreign government. *See In re Phillipine Nat'l Bank*,
 16 397 F.3d 768, 773 (9th Cir. 2005); *Liu v. Republic of China*, 892 F.2d 1419, 1433-34 & n.2 (9th
 17 Cir. 1989); Restatement (Second) of Foreign Relations of the United States § 41 cmt d. (1965) (“A
 18 judgment of a court may be an act of state.”). As Huawei explained, the Shenzhen Court’s decision
 19 gives effect to China’s public interest in enforcing the FRAND obligation. Mot. 11-12 and Ex. 21 at
 20 30, 176. Samsung does not address the Shenzhen Court’s FRAND reasoning or dispute that its
 21 decision turns on Chinese public interest in the enforcement of FRAND obligations. *See* Opp. 10-
 22 12. Samsung also does not dispute that the relief it seeks—an injunction barring Huawei from
 23 enforcing the Shenzhen injunctions—would require this Court to declare the Shenzhen Court’s
 24 decision invalid. *See Credit Suisse*, 130 F.3d at 1346. The Shenzhen Court found an injunction
 25 should issue because Huawei had complied with FRAND while Samsung had not. To find for
 26 Samsung on its antitrust claim, this Court would have to determine that the Shenzhen Court erred in
 27 its FRAND analysis and should not have issued an injunction. Samsung’s claim is accordingly
 28 barred by the act of state doctrine.

1 **II. SAMSUNG HAS NOT PRESENTED A QUESTION OF MATERIAL FACT ON THE**
 2 **TECHNICAL ISSUES**

3 **A. '350 Patent - Selection of Different Quantization Coefficients Is Not Determining**
 4 **a Cell-Specific Ratio.**

5 Asserted claims 1 and 3 require “*determining a cell-specific ratio.*” Mot. Ex. 23 at 14:31. A
 6 ratio is “cell-specific” if it is the same for every UE in a cell. Mot. 13:7-15 (citing Samsung expert
 7 opinions and inventor testimony). Samsung has offered no evidence that the accused products
 8 actually “determine” a cell-specific ratio.¹³ See SS Ex. 14 at ¶¶ 557-70 (failing to show the
 9 calculation of *any* ratios). Samsung instead argues that the actual values used by the products –
 10 called quantization coefficients – *correspond to* the claimed “*cell-specific ratio.*” Mot. Ex. 23, '350
 11 Patent 12:6-8. That is not, however, what the claim requires, and Samsung may not rewrite the claim
 12 to show infringement. *McCarty v. Lehigh Val R Co*, 160 U.S. 110, 116 (1895) (“[W]e know of no
 13 principle of law which would authorize us to read into a claim an element which is not present, for
 14 the purpose of making out a case of novelty or infringement.”).

15 The Huawei documents that Samsung alleges purportedly show this “correspondence”
 16 actually undercut its case: they reveal that the quantization coefficients used by the Huawei phones
 17 are *different* than the cell-specific ratios required by the 3GPP standard and the '350 Patent.
 18 Compare Opp. Ex. 11 at 20 with Opp. Ex. 12 at 14-15 with Opp. Ex. 13 at 15 and Mot. Ex. 23 at
 19 12:25-38. Samsung does not contest that: (1) these quantization coefficients are *not the same* for
 20 each UE in a network cell; (2) the accused products use quantization values that are *not the same* for
 21 each UE in a network cell; and (3) the asserted claim requires that each UE in a network cell
 22 determine *the same* numeric value for the claimed “*cell-specific ratio.*” See Opp. 13:11-19. As the
 23 quantization coefficients are *not the same* for each UE in a cell, as required by the claim, Huawei is
 24 entitled to a judgment of non-infringement.

25 ¹³ Nowhere in Dr. Prucnal’s 280-page report does he identify *a single instance* of a cell-specific ratio
 26 being determined. Nor has any witness testified that such a ratio is determined by the accused
 27 products. Even Dr. Prucnal’s hand-written table – introduced for the first time during redirect at his
 28 deposition on the last day of expert discovery – shows that various mathematical operations
 [REDACTED]

Samsung's attempt to save its infringement case by arguing the doctrine of equivalents (DOE) also fails. As an initial matter, it has conceded the issue by failing to address Huawei's arguments that Samsung's DOE theory was deficient as a matter of law. Mot. 15:26-16:6; *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). Further when required to disclose its infringement contentions, Samsung advanced the same rote boilerplate for every claim element:

To the extent that Huawei or HiSilicon contend that the Accused Instrumentalities do not literally perform this limitation, Samsung alleges that this limitation is practiced under the doctrine of equivalents, as any alleged differences are insubstantial.

Opp. Ex. 18 at pp. 1-2, 4. Blanket reservations do not preserve DOE arguments. See *PersonalWeb Techs. LLC v. Int'l Bus. Machines Corp.*, Case No. 16-cv-01266-EJD, 2017 WL 2180980, at *15 (N.D. Cal. May 18, 2017) (summary judgment of no infringement under DOE because “[b]lanket reservations of rights [in infringement contentions] are not sufficient”); *OptimumPath, LLC v. Belkin Int'l, Inc.*, No. C 09-01398 CW, 2011 WL 1399257, at *8 (N.D. Cal. Apr. 12, 2011), aff'd, 466 Fed. App'x 904 (Fed. Cir. 2012). On the record before this court, Huawei is entitled to summary judgment of non-infringement of the '350 patent.

B. Samsung's Improper Claim Constructions Are Contrary to Plain Meaning.

Samsung attempts to manufacture issues of fact for the '130, '105 and '825 patents by proffering new claim constructions that contradict the plain meaning of the terms. During claim construction, for each of the terms at issue, Samsung stated “no construction necessary.” Pat. L.R. 4-3 Joint Claim Construction Statement Ex. C at 3, 32 & 58 (Apr. 7, 2017), ECF No. 124-3. Huawei, in contrast, offered actual “plain meaning” explanations for the terms, and Huawei’s experts applied that plain meaning to their infringement analysis.

Samsung’s argument that the '130, '105 and '825 claim terms at issue should have been included in Huawei’s list of five “significant terms for construction” (Opp. 14-15, 19 & 22), ignores the fact that Samsung proposed “no construction necessary” for each of the terms.¹⁴ Consistent with this Court’s reasoning in *Fujifilm Corp. v. Motorola Mobility, LLC*, Case No. 12-cv-03587-WHO,

¹⁴ Of the 20 patents at issue during the claim construction process, the parties identified 102 disputed terms for construction. ECF No. 124-2 (Exhibit B), ECF No. 124-3 (Exhibit C). The Court, however, directed the parties to limit the *Markman* briefing to a total of ten terms (five per side) that will be “most significant to resolution of the case.” ECF No. 129 at 22:23-23:2.

1 2015 WL 757575 (N.D. Cal. Feb 20, 2015), and Judge Koh’s reasoning in *Apple, Inc. v. Samsung*
 2 *Electronics Co.*, No. 12-cv-00630 LHK, 2014 WL 252045, at *4,5 (ND. Cal. Jan. 21, 2014), a juror
 3 could not reasonably find that the plain meaning of the terms at issue results in a finding of
 4 infringement.

5 **1. ’130 Patent - “Mapping the Data Information to *Remaining Symbols*”**
 Occurs After Mapping a Reference Signal To a Middle Symbol.

7 During claim construction, Huawei identified the plain meaning of the “mapping a reference
 8 signal” step: that it had to be performed before the “mapping the data information” and “mapping the
 9 acknowledgement information” steps. ECF No. 124 at 3. Samsung proposed no construction. *Id.*

10 Samsung argues that Huawei considers the term “remaining” in isolation. Opp. 15-16. To the
 11 contrary, Huawei analyzed the claim language to show that these steps must be performed in the
 12 order claimed. Mot. 15:14-17:14. The “remaining symbols” in the “mapping the data information”
 13 and “mapping the acknowledgement information” steps refer to the symbols remaining after the
 14 “mapping a reference signal” step is done, as the claim makes clear—“remaining symbols in the slot
 15 that are not used to map the reference signal.”

16 Despite saying that plain meaning refers only to “a spatial location,” Samsung provides no
 17 supporting textual analysis of the claims, and spatial location is inconsistent with the claim language.
 18 Opp. 14-18. Claim 13 recites active steps: “mapping the reference signal,” “mapping the data
 19 information” and “mapping the acknowledgement information.” *Limelight Networks, Inc. v. Akamai*
 20 *Techs, Inc.*, 134 S. Ct. 2111, 2117 (2014) (“A method patent claims a number of steps; under this
 21 Court’s case law, the patent is not infringed unless all the steps are carried out.”). The first claimed
 22 step requires “mapping the reference signal,” not just reserving a place for the reference signal.
 23 Similarly, “mapping the data information” requires mapping into the “remaining symbols.” The
 24 “remaining symbols” thus do not refer to a spatial location; performing the “mapping a reference
 25 signal” step actually maps the reference signals, leaving the “remaining symbols in the slot that are
 26 not used to map the reference signal.” Similarly, “mapping the acknowledgement information”
 27 requires mapping acknowledgement information into the “remaining symbols” left after performing
 28 the “mapping a reference signal” step. Likewise, Samsung’s reliance on Figs. 6-10 to show the final

1 result of mapping the various data types is misplaced because the figures do not show the mapping
 2 itself, nor the order in which it is performed. Samsung’s parking space analogy similarly fails. Opp.
 3 16:14-17.

4 As to equivalents, Samsung is mistaken. *Cadence Pharm. Inc. v. Exela PharmSci Inc.*, 780
 5 F.3d 1364, 1370-71 (Fed. Cir. 2015) does not say that order of claim elements is irrelevant to
 6 vitiation. Opp. 18. Rather, as the Federal Circuit observed in *Planet Bingo*, “after is opposite of
 7 before, not equivalent.” *Planet Bingo, LLC v. GameTech Int’l, Inc.*, 472 F. 3d 1338, 1344 (Fed. Cir.
 8 2006); *see also id.* at 1345.

9 There is undisputedly a marked difference between the order in the claim and Samsung’s
 10 allegations. *See* Mahon Decl.¹⁵ ¶¶ 20-21. Samsung’s expert never analyzes the claim limitation
 11 under DOE. *See* Mot. 20:2-14. Samsung’s opposition makes no effort to do so either. Opp. 17:18-
 12 18:12. Its sole assertion is that its expert “concluded that the order ‘is an insubstantial part of claims
 13 13 and 16,’” citing ¶ 793 of its expert’s report. Opp. 17:22-23. Paragraph 793, however, says nothing
 14 about the order of the claim elements and only analyzes the supposed function/way/result of the
 15 claim as a whole. Mot. Ex. 36 at ¶ 793. Samsung must show the missing limitation is insubstantially
 16 different from the accused, not from the claim as a whole. *Freedman Seating Co. v. Am. Seating Co.*,
 17 420 F.3d 1350, 1358 (Fed. Cir. 2005). Its failure to properly articulate an infringement claim
 18 warrants summary judgment. *Intellicall, Inc. v. Phonometrics, Inc.*, 952 F.2d 1384, 1387-88 (Fed.
 19 Cir. 1992) (citing *Celotex*, 477 U.S. at 325).

20 Finally, Samsung attempts to create a factual dispute by implying that its expert actually says
 21 that Huawei performs the steps in order. Opp. 17:13-16. Samsung’s argument finds no support in the
 22 evidence, nor in its expert report. Mot. 17:22-19:22. On the record before this Court, Huawei is
 23 entitled to summary judgment of non-infringement of the ’130 patent.

24 **2. ‘105 Patent – “FT Pre-Coded Symbols” Cannot Contain Control
 25 Information.**

26 During claim construction, Huawei identified the plain meaning of “FT pre-coded symbols”
 27 as lacking signaling or control information, and explained why in its opening motion. ECF No. 124-

28 ¹⁵ Decl. of Mark Mahon (“Mahon Decl.”) (July 3, 2018), ECF No. 328-44.

1 3 at 32; Mot. 21:13-14. Samsung proposed no definition. *Id.* Huawei’s definition is consistent with
 2 the claim language. Mahon Decl. Ex. C at 13:45-46. The PUSCH symbols identified in Samsung’s
 3 original infringement theory as the claimed FT pre-coded symbols indisputably contain control
 4 information (Opp. 20:16-17, 21:21-23), so the accused products do not infringe as a matter of law.
 5 Mot. 22:17-23:3.

6 Samsung now argues that “‘FT pre-coded symbols’ are simply symbols that contain
 7 information that have been FT pre-coded.” Opp. at 19. But “the context of the surrounding words of
 8 the claim also must be considered in determining the ordinary and customary meaning of those
 9 terms.” *ACTV, Inc. v. Walt Disney Co.*, 346 F.3d 1082, 1088 (Fed. Cir. 2003) (citations omitted).
 10 Although “FT pre-coded symbols” does not contain the word “data” (compare Opp. at 21:2-7), the
 11 claim recites creating those symbols from data only. Mahon Decl. Ex. C at 13:45-51. “*FT pre-coded*
 12 *symbols*” are generated by “*Fourier Transform (FT) pre-coding the non-FT pre-coded modulation*
 13 *data symbols*,” which are generated by “modulating data information to generate non-FT precoded
 14 modulation data symbols.” *Id.* at 13:49-51. Conversely, the claim recites “modulating control
 15 information to generate non-FT precoded modulation control symbols.” Samsung is therefore forced
 16 to admit that “[s]ymbols that only contain data and no control are referred to as ‘data symbols,’ and
 17 those that contain control and no data are ‘control symbols.’” Opp. 20:23-21:1.

18 Samsung contends that since claim 28 is a “comprising” claim, it could include control
 19 information in the “FT pre-coded symbols.” Opp. 20:11-16. “Comprising” is “not a weasel word
 20 with which to abrogate claim limitations” and “does not reach into each of the ... steps to render
 21 every word and phrase therein open-ended.” *Dippin’ Dots, Inc. v. Mosey*, 476 F.3d 1337, 1343 (Fed.
 22 Cir. 2007). “Comprising,” “while permitting additional elements not required by a claim, does not
 23 remove the limitations that are present.” *Power Mosfet Techs., L.L.C. v. Siemens AG*, 378 F.3d 1396,
 24 1409 (Fed. Cir. 2004) (citations omitted). The claim recites that “FT pre-coded symbols” contain
 25 data information, not control information. “Comprising” at the beginning of the claim does not
 26 change that.

27 Samsung asserts that Huawei reads out a disclosed embodiment. Opp. 20:18-21. But, the
 28 asserted claims expressly preclude FT pre-coding control information and, therefore, do not cover

1 Figure 8 and its associated description in the specification, cited by Samsung. “[E]very claim does
 2 not need to cover every embodiment.... [t]his is particularly true where the plain language of a
 3 limitation of the claim does not appear to cover that embodiment.” *Pacing Techs., LLC v. Garmin*
 4 *Int'l, Inc.*, 778 F.3d 1021, 1026 (Fed. Cir. 2015) (citations omitted).

5 Samsung now presents a new argument that PUSCH symbols sometimes but not always
 6 infringe. Opp. 21:8-22: 4. Samsung’s eleventh-hour attempt to save its case is too late. *Smart*
 7 *Wearable Techs. Inc. v. Fitbit Inc.*, Case No. 17-cv-05068-VC, 2018 WL 659013, at *2 (N.D. Cal.
 8 Feb. 1, 2018) (granting summary judgment of noninfringement and refusing amendment of
 9 infringement contentions). Samsung’s expert never opined that the accused products only infringe
 10 some of the time. *See* Mot. Ex. 27 at ¶¶ 362-77, 393-412. Its interrogatory answers also lack any
 11 such allegations. *See* Reply Ex. 51 at pp. 161-215. Even its damages expert assumes the ’105 patent
 12 is infringed at all times. *See* Stake FRAND Decl. Ex. 8 at ¶¶ 76-79, Ex. 1a-c (calculating damages).
 13 The Court should refuse to consider a new infringement allegation at this late date. *See Smart*
 14 *Wearable*, 2018 WL 659013, at *2.

15 In any event, Samsung does not set out a complete infringement case on its new theory. It has
 16 not shown that Huawei’s phones, when used on US carriers’ networks, use PUSCH symbols that
 17 sometimes lack control data. A theoretical possibility that PUSCH symbols lack control data does
 18 not mean it happens. Samsung has failed to meet its burden to prove infringement. *Egyptian*
 19 *Goddess, Inc. v. Swisa, Inc.*, 543 F.3d 665, 678 (Fed. Cir. 2008); *TechSearch, L.L.C. v. Intel Corp.*,
 20 286 F.3d 1360, 1372 (Fed. Cir. 2002).¹⁶ On the record before this Court, Huawei is entitled to
 21 summary judgment of non-infringement of the ’105 patent.

22 **3. ’825 Patent – Applying the Plain Meaning of *Indicating*, the Huawei**
 23 **Accused Products Do Not Receive System Information Indicating a**

24 ¹⁶ Samsung’s argument that “there are PUSCH symbols containing only data and no control
 25 information” is contradicted by its own expert. Opp. 21:19-21. Samsung’s expert, Dr. Bambos,
 26 opined that every PUSCH symbol contains control data. Mot. Ex. 36 at ¶ 564 (“the multiplexed data
 27 and CQI information is mapped to every symbol not containing the DM RS. Each symbol, in other
 28 words, consists of coded CQI and data information mapped over different subcarriers”). Although
 Samsung now offers a contradicting declaration from Dr. Bambos (Opp. 21:19-23; Opp. Ex. 21 at
 ¶ 16), it cannot create an issue of fact by submitting a conflicting affidavit. *Yeager v. Bowlin*, 693
 F3d 1076, 1080 (9th Cir. 2012); *Del. Valley Floral Grp. v. Shaw Rose Nets, LLC*, 597 F.3d 1374,
 1381-82 (Fed. Cir. 2010).

Group of IDs.

The '825 patent claims require "system information indicating a group of identification(ID)s." During claim construction, Huawei provided an explanation consistent with the plain meaning that the term means "system information including a group of IDs." ECF No. 124-3 at 58. Samsung proposed no construction for the term. *Id.*

Huawei’s construction is consistent with a general dictionary definition and the intrinsic evidence. When there are “different possible meanings for” a claimed phrase, it is “entirely reasonable … to look to the specification … to determine the manner in which the term was used” *TAP Pharm. Prods., Inc. v. Owl. Pharm., LLC*, 419 F.3d 1346, 1354 (Fed. Cir. 2005) (“containing” means “encompassing” instead of “comprising” in light of the specification’s related usage). Here, there are two applicable common meanings of “indicate”: (1) to point out or index, or (2) to state or express briefly. *E.g.*, Reply Ex. 52 (Dictionary.com screenshot) and Ex. 53 (Merriam-Webster screenshot). Samsung never identifies the plain meaning of “indicating” that it claims is “readily understood” by persons of skill, *see* Mot. 23-24, but its expert argued that it means to “point out” or “index.” Mot. Ex. 41 at ¶ 164. As Huawei has explained, however, the specification of the ’825 patent equates the claimed “indicating” with “including.” Mot. 23-24. Construing “indicating” to mean “including” instead of “pointing to” or “indexing” is the only construction “consistent with the specification,” *Phillips v. AWH Corp.*, 415 F.3d 1303, 1316 (Fed. Cir. 2005), that “stays true to the claim language and most naturally aligns with the patent’s description of the invention.” *Renishaw PLC v. Marposs Societa’ per Azioni*, 158 F.3d 1243, 1250 (Fed. Cir. 1998). Thus, here the correct plain meaning of “indicating” is “including.”

The '825 patent specification refutes Samsung's accusation that Huawei mischaracterized the '825 patent. *See* Opp. 24-25. The '825 patent explains that allowing information "to be detected" means the information is *included in* the system information. *E.g.*, Mot. Ex. 39 at 2:59-63 ("The system information ... includes information to be detected by the UE."). This allows the Node B to "manage[] temporary ID pools on a cell-by-cell basis," *id.* at 8:44-45, allowing the UE to "detect temporary IDs available in the current cell." *Id.* at 7:11-20, 9:56-65.

Under the plain meaning of “indicates” that comports with the intrinsic evidence, there is no

1 genuine dispute of material fact that the accused Huawei devices do not infringe the asserted '825
 2 patent claims. Dr. Valenti admits, referring to the delay duration T and valid period P, that being
 3 “*included* in system information” means that the “*value* is what’s transmitted”—not simply an index
 4 or other way to point to a group of IDs. Mot. Ex. 40 at 95:22-96:14 (emphasis added). Samsung does
 5 not dispute or distinguish that testimony, and instead presents attorney argument in an attempt to
 6 rehabilitate its infringement theory. *See* Opp. 22-23. Even then, it concedes that the system
 7 information does not “include” the group of IDs—it simply asserts that “the system information
 8 includes both group ID *information*, and *specification information* regarding the preamble and
 9 corresponding preamble indexes within the group.” *Id.* (emphasis added). The evidence it cites also
 10 supports, at best, only that the *size* of a preamble group is included in the system information.
 11 Samsung’s conclusory assertion that, by including the size, the “system information necessarily
 12 includes the range of preamble indexes (the group of IDs)” is unsupported by the evidence it points
 13 to or the testimony of its expert. *See* Mot. Ex. 40 at 95:22-96:14.

14 Samsung’s misplaced reliance on its DOE arguments cannot save its infringement case.
 15 Boilerplate and conclusory opinions under DOE are insufficient. Mot. 25. Thus, based on the record
 16 before this Court, Huawei is entitled to summary judgment of non-infringement of the '825 patent.

17 III. CONCLUSION

18 Huawei respectfully requests that this Court grant its motions for summary judgment on
 19 Samsung’s antitrust claim and for non-infringement on Samsung’s '350, '130, '105 and '825 patents.

22 Dated: July 24, 2018

23
 24 David T. Pritikin (*Pro Hac Vice*)
dpritikin@sidley.com
 25 David C. Giardina (*Pro Hac Vice*)
dgiardina@sidley.com
 26 Douglas I. Lewis (*Pro Hac Vice*)
dilewis@sidley.com
 27 John W. McBride (*Pro Hac Vice*)
jwmcbride@sidley.com
 28 SIDLEY AUSTIN LLP

Respectfully submitted,

SIDLEY AUSTIN LLP

/s/ Michael J. Bettinger

Michael J. Bettinger (SBN 122196)

mbettinger@sidley.com

Irene Yang (SBN 245464)

irene.yang@sidley.com

SIDLEY AUSTIN LLP

555 California Street, Suite 2000

San Francisco, California 94104

1 One South Dearborn
2 Chicago, Illinois 60603
3 (312) 853-7000 – Telephone
4 (312) 853-7036 – Facsimile

(415) 772-1200 – Telephone
(415) 772-7400 – Facsimile

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*Attorneys for Huawei Technologies Co., Ltd.,
Huawei Device USA, Inc., Huawei Technologies
USA, Inc., and HiSilicon Technologies Co., Ltd.*